

IN THE CIRCUIT COURT, FOR
THE SECOND JUDICIAL
CIRCUIT, IN AND FOR
LEON COUNTY, FLORIDA

**CASE NO. xx-2019-CA-xxxx
DIVISION:**

**SEAN CARANNA, an individual and
FLORIDA CARRY, INC.,
a Florida not-for-profit corporation.**
Plaintiffs,

v.

**RICK SWEARINGEN, individually
and in his official capacity, and
FLORIDA DEPARTMENT OF
LAW ENFORCEMENT**
Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs SEAN CARANNA and FLORIDA CARRY, INC., sue RICK
SWEARINGEN, Commissioner of the Florida department of Law Enforcement,
and the FLORIDA DEPARTMENT OF LAW ENFORCEMENT and as grounds
Plaintiffs hereby state:

Jurisdiction:

1. This is a complaint for injunctive and declaratory relief, and for
damages in excess of \$30,000 exclusive of attorney's fees and costs. This court has
jurisdiction pursuant to Fla. Stat. §790.33,

Parties:

2. Plaintiff, Sean Caranna is an individual residing in Volusia County.
3. Plaintiff, Florida Carry, Inc., (“Florida Carry”), is a Florida not-for-profit corporation existing under the laws of Florida.
4. Florida Carry’s purpose is to advance the fundamental civil right of all Floridians to keep and bear arms for self-defense as guaranteed by the Second Amendment to the United States Constitution and the Constitution of Florida's Declaration of Rights.
5. Members of Florida Carry have had their rights violated by the illegal actions of the Defendants as set forth herein.
6. Rick Swearingen is the Commissioner of the Florida Department of Law Enforcement.
7. The Florida Department of Law Enforcement (“FDLE”) is an agency of the State of Florida.
8. Defendant FDLE is the state agency that is responsible to act as point of contact (“POC”) for review of criminal history records for firearms purchases pursuant to the express terms of Fla. Stat. §790.065 and the Brady Handgun Violence Prevention Act of 1993.

Facts in Common:

9. FDLE is responsible under Florida and federal law for the processing

of background checks related to the purchase of a firearm from licensed dealers in the state of Florida

10. A person engaged in the business of selling a firearm is required to obtain a Federal Firearms License (FFL).

11. FDLE established a division within FDLE called the Firearms Purchase Program (FPP) to handle the processing of background checks pursuant to Fla. Stat. §790.065.

12. Each resident of the state of Florida has the fundamental, enumerated rights to keep and to bear arms. *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

13. The right to keep and bear arms necessarily includes a corresponding right to purchase a firearm.

14. Without the right to purchase a firearm the rights to keep and to bear arms are meaningless.

15. The right to keep and bear arms may be denied to certain persons based on factors not applicable to Plaintiffs herein.

16. A person who is convicted of a felony as that term is defined by Florida law loses the right to keep and bear arms.

17. A person who has lost the right to keep and bear arms will be identified throughout this Complaint as a “prohibited person”.

18. A prohibited person may belong to one or more categories of prohibited persons, i.e. be a convicted felon or be the subject of a domestic violence or other injunction against violence or stalking.

19. A person who is not a member of any category of prohibited persons has an unquestioned right to keep and to bear arms in defense of themselves and the lawful authority of the state of Florida.

20. When an individual seeks to purchase a firearm from an FFL, federal and Florida law requires the FFL to conduct a background check to determine the eligibility of the purchaser.¹

21. Plaintiffs have the right to acquire firearms which are commonly used for self-defense.

22. With limited exception, Federal law requires that anyone, including holders of a Florida Concealed Weapon or Firearm License (“CWFL”), complete a National Instant Criminal Background Check System (“NICS”) background check to purchase a firearm from a Federal Firearm Licensee (firearm dealers) (“FFL”). *See* 18 U.S.C. §922(t).

23. The Defendants are required under Federal Law to check NICS pursuant to the Brady Act prior to authorizing the purchase of a firearm through an FFL; however, no law allows FDLE to charge CWFL holders or those with an

¹ This Process is codified in Florida law in Fla. Stat, §790.065(2)(c)(1-8)

active Certification from the Criminal Justice Standards and Training Commission as a “law enforcement officer,” a “corrections officer,” or a “correctional probation officer” (“Active Law Enforcement Officer”) a fee for this mandatory background check.

24. As Point of Contact, FDLE acts as an intermediary between an FFL and the federal databases checked by NICS.

25. Defendants have the authority to complete a NICS background check of CWFL holders who wish to purchase or transfer a firearm from an FFL pursuant to the Brady Act.

26. FDLE checks several supplemental Florida state databases in addition to the NICS databases mandated by Federal law for firearm purchases.

27. The FBI does not charge any fee for conducting NICS checks. However, FDLE charges a per-transaction state fee, pursuant to Subsection (1) of Fla. Stat. §790.065, for all firearm purchase background checks.

28. Defendants are aware that the field of firearms law is preempted.

(1) PREEMPTION.—Except as expressly provided by the State Constitution or general law, **the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or any administrative regulations or rules adopted by local or state government relating thereto.** Any such existing

ordinances, rules, or regulations are hereby declared null and void.

Fla. Stat. §790.33(1) (emphasis added)

29. Defendants rules and regulations require that FFLs collect the state background fee directly from the consumer.

30. FDLE has promulgated regulations in violation of Fla. Stat. §790.33.

31. FDLE has knowingly and willfully promulgated these rules, policies, and regulations without any statutory authority to do so.

32. FDLE has limited rule making authority pursuant to the terms of Fla. Stat. §790.065. See also *State v. Watso*, 788 So. 2d 1026, 1027 (Fla. 2d DCA 2001).

33. FDLE's rule making and authority is limited to:

- a. Promulgating a form to be used. Fla. Stat. §790.065(1)(a)(1);
- b. The imposition of a fee no greater than \$8.00 for a background check against those who do not hold a valid CWFL or Certification as an Active Law Enforcement Officer. Fla. Stat. §§790.065(1)(a)(2) and 790.065(1)(b);
- c. Procedures for payment of said fee. Fla. Stat. §790.065(1)(a)(2);
- d. Rules for the correction of incomplete or erroneous criminal history records. Fla. Stat. §790.065(6); and
- e. Regulations to ensure the privacy, confidentiality, and security of

records. Fla. Stat. §790.065(8)

34. Fla. Stat. §790.065(6), makes it clear that all other procedures are “established by this section,” not by agency rule or regulation.

35. FDLE is prohibited from enacting or enforcing rules, policies, or procedures under Fla. Stat. §790.065, that are not expressly authorized by the legislature. *State v. Watso*, 788 So. 2d 1026, 1030 (Fla. 2d DCA 2001)

36. Defendants enactment or enforcement of any regulation or rule governing the sale or transfer of firearms that is not specifically authorized by law is preempted by Fla. Stat. §790.33.

Section 790.33 must be read to preempt even those state agencies deriving their authority directly from the Florida Constitution.

Fla. Carry, Inc. v. University of North Florida, 133 So. 3d 966, 968 (Fla. 1st DCA 2013)

37. Defendants are entitled to no deference concerning their interpretation of any statute. Art. V Fla. Stat. §21, Fla. Const. See also *Halifax Hosp. Med. Ctr. v. State*, 44 Fla. L. Weekly S149 n.2 (Fla. April 18, 2019) and *Citizens of Fla. v. Brown*, 269 So. 3d 498, 499 (Fla. 2019).

38. Plaintiffs, Sean Caranna, the Officers of Florida Carry, and members herein hold valid Florida CWFLs.

39. Plaintiff Florida Carry has members herein who hold certification as Active Law Enforcement Officers.

40. Members of Florida Carry are adversely affected by Defendant's unauthorized and illegal rules, regulations, policies and directives complained of herein.

41. Holders of a CWFL issued pursuant to Fla. Stat. §790.06 and Active Law Enforcement Officers are exempt from the provisions of Subsection (1) of Fla. Stat. §790.065, pursuant to the plain and unambiguous language of Fla. Stat. §790.065(1)(b).

Class Action

Plaintiffs reallege paragraphs 1 through 41 as if set forth in full and further allege:

42. This action is brought on behalf of a class of individuals.

43. The class is defined as all persons who for the preceding 4 years from the date of filing of this action have attempted to purchase a firearm from a Federal Firearms Licensed dealer (FFL) and:

- a. Who at the time of purchase held either a valid:
 - i. CWFL pursuant to the provisions of Fla. Stat. § 79.06; or
 - ii. An active certification from the Criminal Justice Standards and Training Commission as a "law enforcement officer," a "corrections officer," or a "correctional probation officer" as

defined in Fla. Stat. §943.10(1),(2), (3), (6), (7), (8), or (9).

- b. Who at the time of purchase were charged a fee for the processing of the criminal history check conducted prior to the sale being completed.

44. The exact number of class members is unknown to Plaintiff but on information and belief is known and ascertainable by the records of the Defendants.

45. Based on the number of background checks performed by FDLE for the purchase of a firearm during the preceding 4 years prior to bringing this action and the percentage of firearms purchased by CWFL holders, it is estimated that the class size will exceed 500,000.

46. The number of proposed class members makes separate joinder of each class member impracticable.

47. Separate joinder would require the Court to adjudicate each individual's rights separately.

48. Class certification will allow the Court to identify any policy established by FDLE that impermissibly charges individuals an unauthorized fee prior to exercising their constitutional right to bear arms without authorization to do so.

49. All proposed members of the class present similar issues of law and

fact, in that each held either a valid CWFL or Certification as an Active Law Enforcement Officer at the time they were illegally charged an unauthorized fee prior to purchasing a firearm.

50. Each of the class members has been found by FDLE to be fully qualified to purchase and possess firearms.

51. All proposed members of the class are persons whose right to purchase a firearm in order to exercise their fundamental enumerated rights to keep and bear arms was unjustly and without authorization denied unless they paid said fee.

52. All proposed members of the class are persons who were required to pay a fee higher than that provided for by law to exercise their right to bear arms.

53. All proposed members of the class have been adversely affected by rules, policies regulations, or procedures implemented by Defendants.

54. All members of the class, like named Plaintiffs, have had their right to purchase a firearm impeded unlawfully.

Count 1

Violation of Fla. Stat. §790.33, by Defendants Ultra Vires. By Promulgating and Enforcing Rules and Regulations Whereby CWFL Holders and Certified Law Enforcement and Correctional Officers are Required To Pay Illegal Unauthorized Fees For The Purchase of A Firearm.

Plaintiffs reallege paragraphs 1-54 as if set forth in full and further allege:

55. Florida Carry has numerous members throughout the state who are required by Defendants to pay a state fee for state background checks when they exercise their right to purchase firearms.

56. Florida Carry itself owns firearms and has paid Defendants to conduct background checks on its officers when they receive firearms for the organization.

57. Defendants' authority to charge a fee to conduct a background check of a potential firearm buyer or transferee against state databases derives from Subsection (1) of Fla. Stat. §790.065.

58. Plaintiffs, class members, and other similarly situated, have paid fees mandated by Defendants for firearm pre-purchase background checks.

59. Defendants subject CWFL holders and Active Law Enforcement Officers to pay for supplemental background checks against state databases that are not mandated by State or Federal law.²

60. The fees paid to FDLE are applied, at least in part, to the cost of

² See FDLE Firearm Purchase Process FAQ, <https://www.fdle.state.fl.us/FPP/FAQs1.aspx> (last visited Jul. 15, 2019)

maintaining the supplemental state criminal history check system established by Fla. Stat. §790.065(1)(a)2.

61. Defendants charge the fees provided for in subsection (1) of Fla. Stat. §790.065, against CWFL holders and Active Law Enforcement Officers despite the plain and unambiguous language of sub-subsection (1)(b) of Fla. Stat. §790.065.

62. Plaintiffs have suffered actual economic and non-economic damages as a result of Defendants' refusal to comply with the plain terms of Fla. Stat. §790.065.

WHEREFORE, the Plaintiffs named in this count, on behalf of themselves, their members, and other similarly situated CWFL holders and Active Law Enforcement Officers, request:

- a. A Declaratory Judgment that any FDLE policy, rule, or regulation allowing or requiring State background checks on CWFL holders or Active Law Enforcement Officers was created without authority and is in violation of section 790.33.
- b. A Declaratory Judgment that FDLE is prohibited from promulgating any policy, rule, or regulation regarding the imposition of a fee for background checks when a CWFL holder or Active Law Enforcement Officers purchases a firearm.

- c. A Declaratory Judgment that the actions of FDLE as set forth herein were a knowing and willful violation of Fla. Stat. §790.33.
- d. Declaratory relief stating that Commissioner Swearingen is the appointed agency head under whose jurisdiction the knowing and willful violation of Fla. Stat. §790.33 by FDLE, as set forth herein, occurred.
- e. Declaratory relief stating that Defendants are preempted from regulating the purchase or transfer of firearms to CWFL holders and Active Law Enforcement Officers except as expressly provided by law.
- f. Declaratory relief stating that CWFL holders and Active Law Enforcement Officers are exempt from Fla. Stat. §790.065.
- g. Declaratory relief stating that Defendants violated Fla. Stat. §790.33, by charging inapplicable background check fees.
- h. Declaratory relief stating that Comm. Swearingen knowingly and willfully violated Fla. Stat. §790.33.
- i. Injunctive relief ordering Defendants to cease and desist from charging CWFL holders and Active Law Enforcement Officers inapplicable State supplemental background check fees.
- j. Injunctive relief ordering FDLE to strictly comply with the provisions

of Fla. Stat. §790.065, including but not limited to exempting CWFL holders and Active Law Enforcement Officers from the dictates of Fla. Stat. §790.065(1)(a).

- k. Assessment of a civil fine against Commissioner Swearingen pursuant to Fla. Stat. §790.33(3)(c).
- l. An award of actual damages in the amount of economic damages and costs suffered by any class member or Plaintiff as provided by statute.
- m. An award of attorneys' fees and costs as provided by statute.
- n. All other relief deemed just and equitable by the Court.

Count 2

Violation of Fla. Stat. §790.33, by Defendants Ultra Vires. By Promulgating and Enforcing Rules and Regulations Whereby CWFL Holders and Certified Law Enforcement and Correctional Officers are Subject To Additional Unauthorized and Illegal Background Checks.

Plaintiffs reallege paragraphs 1-54 as if set forth in full and further allege:

63. Plaintiff, Sean Caranna, the Officers of Florida Carry, and members herein hold either a valid Florida CWFL, certification as an Active Law Enforcement Officer, or both.

64. Florida Carry has numerous members throughout the state who have been subjected to unauthorized, illegal state background checks by Defendants, which they have been forced to pay for, when exercising their right to purchase firearms.

65. The Officers of Florida Carry have been subjected to these same unauthorized illegal background checks for firearms owned by Florida Carry, held in the possession of Officers of the organization.

66. Defendants' authority to conduct a background check of a potential firearm buyer or transferee against state databases derives from Subsection (1) of Fla. Stat. §790.065.

67. Holders of a CWFL issued pursuant to Fla. Stat. §790.06 and Active Law Enforcement Officers are exempt from the provisions of Subsection (1) of Fla. Stat. §790.065, pursuant to the plain and unambiguous language of Fla. Stat. §790.065(1)(b).

68. Defendants subject CWFL holders and Active Law Enforcement Officers to supplemental background checks against state databases that are not mandated by State or Federal law.³

69. Defendants require these unauthorized and illegal background checks against CWFL holders and Active Law Enforcement Officers despite the plain and unambiguous language of sub-subsection (1)(b) of Fla. Stat. §790.065.

70. Numerous CWFL holders and Active Law Enforcement Officers, who are not prohibited persons including Members and non-members of Florida Carry, are illegally delayed or outright denied the right to purchase a firearm based on

³ See FDLE Firearm Purchase Process FAQ, <https://www.fdle.state.fl.us/FPP/FAQs1.aspx> (last visited Jul. 15, 2019)

inaccurate and incomplete state database entries during these illegal and unauthorized background checks.

71. On information and belief, Defendants have subjected CWFL holders and Active Law Enforcement Officers to adverse actions, including delays and non-approvals of firearm purchases, based on inaccurate and incomplete state database information discovered during these unauthorized and illegal background checks in violation of Fla. Stat. §790.33.

72. Plaintiffs have suffered actual economic and non-economic damages as a result of Defendants' refusal to comply with the plain terms of Fla. Stat. §790.065.

WHEREFORE, the Plaintiffs named in this count, on behalf of themselves, their members, and other similarly situated CWFL holders and Active Law Enforcement Officers, request:

- a. Declaratory relief stating that Defendants are preempted from regulating the transfer of firearms to CWFL holders and Active Law Enforcement Officers except as expressly provided by law.
- b. Declaratory relief stating that CWFL holders and Active Law Enforcement Officers are exempt from Fla. Stat. §790.065.
- c. Declaratory relief stating that Defendants have no authority to subject CWFL holders and Active Law Enforcement Officers purchasing

firearms to supplemental background checks using state databases that are not part of NICS.

- d. Declaratory relief stating that Defendants violated Fla. Stat. §790.33, by conducting unauthorized background checks on CWFL holders and Active Law Enforcement Officers.
- e. Declaratory relief stating that Commissioner Swearingen is the appointed agency head under whose jurisdiction the knowing and willful violations of Florida Statute §790.33 by FDLE, as set forth herein, occurred.
- f. Declaratory relief stating that Comm. Swearingen knowingly and willfully violated Fla. Stat. §790.33.
- g. Injunctive relief ordering Defendants cease and desist from subjecting CWFL holders and Active Law Enforcement Officers to adverse actions, or inaction, based on background checks against supplemental state databases that are not required by Federal law or authorized by State law when purchasing a firearm.
- h. Assessment of civil fine against Comm. Swearingen pursuant to Fla. Stat. §790.33(3)(c).
- i. An award of actual damages in the amount of \$100.00 per day in non-economic compensatory damages to each class member or Plaintiff as

provided by statute for the deprivation of their fundamental right to purchase and possess firearms, if their rights were delayed or denied due to unauthorized State supplemental background checks.

- j. An award of actual damages in the amount of economic damages and costs suffered by any class member or Plaintiff as provided by statute.
- k. An award of attorneys' fees and costs as provided by statute.
- l. All other relief deemed just and proper by the Court.

Plaintiffs demand trial by jury on all issues so triable.

Dated this 14th day of August 2019.



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